the plaintiff's taxi and the defendant's lorry. Section 21 provides, inter alia, that there shall be a right of appeal if the amount in dispute exceeds $2,000 or 'with leave of the High Court if under that amount'. The High Court's power is obviously discretionary and such discretionary power has to be exercised judicially and ought to be exercised if prima facie and generally it could be shown that justice would require an appellate investigation of the case.

I was referred by counsel for the appellant/defendant to two cases, namely, *Wong Yin & Ors* v *Wong Mook*[1] and *Pang Hon Chin* v *Nahar Singh*.[2] These cases did not lay down any exhaustive principle but they are authority for the following propositions. To obtain leave to appeal when the amount involved is below the statutory amount an applicant for leave must show that a serious and important issue of law is involved. That was held by Murray-Aynsley CJ in *Wong Yin's* case,[1] on the basis that rights of appeal are purely creatures of statutes and a court cannot entertain any which cannot be brought strictly within the statutory limit. The circumstances for granting leave would include (though obviously not limited to) cases where an applicant is able to demonstrate a prima facie case of error or if the question is one of general principle upon which further argument and a decision of a higher tribunal would be to public advantage. That was pronounced by Edgar Joseph Jr J in *Pang Hon Chin's* case.[2] These propositions have a common thread: that to deny leave may conceivably result in a miscarriage of justice.

The appellant in this case sought to persuade me that the respondent had materially departed from para 2 of his statement of claim and from his police report where he said that the nearside of his taxi had collided into the rear offside of the lorry which had emerged from a parking lot. It was said by counsel that, at the trial, the driver of the taxi had said that the lorry was parked at 90 degrees to Bishan Street 12 and had emerged from the parking lot and that on seeing the lorry he swerved to his right and, in spite of his evasive action, the collision occurred. Counsel for the appellant referred to the surveyor's damage report which recorded that there was 'frontal (nearside)' damage to the taxi. That was the first alleged material departure in the respondent's case. The second material departure was based on the photographs which showed that the off-side front bumper of the taxi was also damaged. But counsel for the respondent pointed out that the driver of the taxi had explained that this damage was a consequential damage, which resulted from the impact on the nearside front bumper. Counsel for the appellant could then only say that he was not sure if the trial magistrate had accepted this part of the respondent's evidence.

I was of the view that there was no departure in the respondent's case at all from beginning to end. The appellant on the pleadings, the police report and the photographs knew or ought to have known that it was the respondent's case that the appellant's lorry had emerged from a parking lot and had incommoded the taxi, resulting in the collision. The omission to mention the swerving action to the right of the taxi in the statement of claim and in the police report did not mislead and it could not have misled the appellant at all. Accordingly, I came to the conclusion that this was merely a dispute on facts for which leave to appeal should not be granted and that the trial magistrate had evidence of the two versions and he was perfectly entitled to accept either version on the evidence before him. I therefore dismissed the motion with costs.

Motion dismissed.

Solicitors: *Niru & Co*; *Khosa & Caines*.

Reported by *Terence Tan Bian Chye*

Melati Bte Haji Salleh v Registrar-General of Births & Deaths & Anor

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 62 OF 1989
CHAN SEK KEONG J
5 MAY 1989

Family Law – Adoption – Right of adopted child to inspect Adoption of Childen Register – Object of amended Adoption Act – Whether legal effect of adoption relevant to right to inspect – Purpose of inspection of Register – Adoption Act (Cap 4, 1985 Ed), s 12(6), (10) & (11) – Adoption Act (Cap 43, 1970 Ed), s 11(6) & (8)

The plaintiff, who was adopted by Malay parents, believed her natural parents were Chinese. She applied to inspect the Adoption of Children Register ('the Register') and make copies of it. Following the defendants' refusal, she applied to the court for an order that she be allowed to inspect the Register. Her supporting affidavit stated that she wished to know the identities of her natural parents so she could provide for them in her will. The defendants argued that the order should not be granted because the object of the amendments to the Adoption Act was to protect the interests of all parties to the adoption. It was further argued that since an adoption order severs forever all the rights and obligations between the natural parents and the child, the court should not in principle grant the order. Granting the order would set a dangerous precedent, as it may be abused and lead to undesirable social consequences. It was also claimed that the application was not made on bona fide grounds as it was made at such a late stage (the plaintiff was aged 34) and her natural parents were unlikely to survive the plaintiff.

Held, granting the order:

(1) The law before 15 May 1972 was that every person had a right to obtain a certified copy of any entry in the Register. However, s 5 of Act 9 of 1972 changed the procedure for the

registration of adopted children. The substantial change brought about by the amendment was that adopting parents would only be issued with birth certificates of adopted children which did not disclose their adoption.

(2) If the object of the new law was to protect the interests of all parties, that object fails once the adopted child knows he or she is adopted.

(3) The legal effect of an adoption order should not by itself determine whether or not the adopted child who knows he or she is adopted should be denied the right to know his or her natural parents. In the absence of a demonstrable public interest against disclosure, it would be morally right to grant the adopted child the right to know who his or her natural parents are.

(4) The countervailing public interest in favour of full disclosure in at least one specific circumstance was to prevent an adopted child from contracting a marriage within any of the prohibited degrees of relationship prescribed by s 10 of the Women's Charter.

(5) There was no evidence that the plaintiff had anything but a bona fide motive for her application. If she has a right to be informed, it does not matter what her motive was as long as she was not seeking the information for an illegitimate purpose.

(6) Section 12(6) of the Act allows for the inspection of the Register where the Registrar-General is satisfied that the particulars are material for the purpose for which the information is required, but neither the materiality nor the purpose is defined in that section.

(7) The Registrar-General rejected the application of the plaintiff solely on the ground that she was an adopted child. This was not a proper ground for refusing the request. Any legitimate purpose for inspection would suffice, since s 12(6) does not prescribe any particular purpose of inspection.

(8) The plaintiff's request would be granted, but to allow the defendants to apply for a stay of this order should they decide to appeal, the order should lie in the Registry for seven days from the date of judgment.

Legislation referred to
Adoption Act (Cap 4, 1985 Ed) s 12(6), (10), (11)
Adoption Act (Cap 43, 1970 Ed) s 11(6), (8)
Act 9 of 1972, s 5 (now s 12 of Cap 4, 1985 Ed)

Wong Soo Chih (Miss) for the plaintiff.
Sim Mei Ling (Miss) (State Counsel) for the defendants.

Cur Adv Vult

Chan Sek Keong J: This is an application by the plaintiff, an architect, for an order that she or her solicitors be permitted to inspect the original or former entry in the Adoption of Children Register or to take a copy thereof relating to the original birth certificate and legal adoption of the plaintiff.

The plaintiff's solicitors wrote to the Registrar-General on 14 July 1988 that the plaintiff, who believes her ethnic origin to be Chinese, would like to find out who her natural parents were and requested that they be allowed to inspect the Adoption of Children Register maintained under s 11 of the Adoption Act before it was amended by Act 9 of 1972 (hereinafter called 'the defunct Register') and make copies of the entries therein relating to their client's adoption. The Registrar-General replied on 10 August 1988 as follows:

> I refer to your letter dated 14 July 1988.
>
> 2 Under s 12(6) of the Adoption of Children Act (Cap 4), no person shall be allowed to take a copy of the original entry as to the birth of a child who has been subsequently adopted.
>
> 3 As your client was legally adopted, we regret that we are unable to accede to her request for her original birth certificate.

In making this application, the plaintiff has filed an affidavit stating that she intended to make her will and that she wished to know the identities of her natural parents so that she could provide for them in her will. She has also stated that she did not wish to obtain the information from the adopting parents, as she did not wish to hurt them in their old age.

To determine whether the plaintiff has the right to have access to the defunct Register in order to know who her natural parents are, it is necessary to trace the legislative history of the Adoption Act. Until 15 May 1972, when Act 9 of 1972 came into force, the Adopted Children Register was maintained by the Registrar-General of Births and Deaths pursuant to and in accordance with s 11 of the Adoption Act (Cap 43, 1970 Ed). The procedure thereunder was that on receipt of an adoption order made by the court, the prescribed particulars, ie date, country and birth of the adopted child, his name and surname, the sex of the child, the names and surnames of the adopting parents and particulars of the court order would be entered in the Adopted Children Register. By s 11(6), the Registrar-General was required to mark an entry in the register of births with the word 'Adopted'. Section 11(8) also provided that every person should be entitled to have a certified copy of any entry in the Adopted Children Register in all respects upon and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Registration of Births and Deaths Act, in respect of the supply of certified copies of entries in the registers of births and deaths.

The law before 15 May 1972 was therefore that every person had a right to obtain a certified copy of any entry in the defunct Register. However, s 5 of Act 9 of 1972 (now s 12 of Cap 4, 1985 Ed) changed the procedure for the registration of adopted children in the following manner.

> (a) (By subsection (3))
> Upon receipt of the form referred to in subsection (1), the Registrar-General shall if the birth of the adopted child has been registered in Singapore cause the entry in the relevant register of births to be marked with the word 'Adopted'. Particulars as to the birth of the child shall then be registered separately substituting the name conferred by the

adoption for the name of the child prior to adoption, and recording the name, address and description of each adopting parent in substitution for the particulars as to the natural or last adopting parents.

(b) (By subsection (4))
In any case where the birth of the adopted child has not been registered in Singapore, the Registrar-General, upon being satisfied as to the correctness of the information supplied to him as to the date and place of birth of the child, shall register particulars as to the birth of the child in accordance with the procedure in subsection (3).

(c) (By subjection (5))
Where a copy of the entry as to the birth of any child to which this section relates is required for any purpose, the Registrar-General, subject to any regulations as to payment of fees as are prescribed, shall supply a copy of the last entry made pursuant to subsection (3), omitting in the copy the word 'Adopted' that appears in the original or former entry.

(d) (By subsection (6))
No person shall be permitted to inspect any such original or former entry, or to take a copy of such original or former entry unless that person has certified, and the Registrar-General is satisfied, that the particulars recorded in the original or former entry are material for the purpose for which the inspection is required.

(e) (By subsection (7))
Where on 15th May 1972 an adoption order has already been made in respect of an infant, the Registrar-General shall upon application being made by either of the adopting parents, or in the event of both adopting parents being dead, by the adopted child register particulars as to the birth of the child in accordance with subsection (3) and upon registration, subsection (5) shall apply to any copy of an entry as to the birth of the adopted child.

(f) (By subsection (8))
The copy of the entry as to the birth of the child supplied by the Registrar-General under subsection (5) shall have the same effect in law as a copy of an entry as to the birth of a child who is not adopted.

(g) (By subsection (10))
The Adopted Children Register maintained under section 11 repealed by the Adoption of Children (Amendment) Act 1972 shall cease to be maintained and no extracts therefrom shall be issued except by an order of court.

(h) (By subsection (11))
The Registrar-General shall keep such other registers and books, and make such entries therein as may be necessary to record and make traceable the connection between any entry in the Adopted Children Register previously maintained under section 11 repealed by the Adoption of Children (Amendment) Act 1972 and an entry in the registers of births made pursuant to this section, but the registers and books kept under this subsection shall not be, nor shall any index thereof be, open to public inspection or search nor except under an order of court shall the Registrar furnish any person with any information contained in or with any copy or extract from any such registers or books.

The substantial change brought about by these amendments was that after 15 May 1972, adopting parents would only be issued with birth certificates of adopted children which do not disclose their adoption. The effect is that no adopted child who is adopted by parents of the same ethnic group would discover the fact of his adoption by merely looking at his birth certificate. Whatever may be the policy considerations behind the amendments, the fact remains that in a multi-racial society like Singapore, the amendments will have limited effect because they can never conceal an inter-racial adoption. This case is a demonstration of that fact. The plaintiff believes her ethnic origin is Chinese although her legal parents are Malay.

Now that the plaintiff has discovered her adopted status, she desires to find out who her natural parents are. The first defendant denied her that 'right' solely on the ground that she was an adopted child. Before me, state counsel has argued strenuously that the plaintiff be barred from inspecting the defunct Register. She has advanced three reasons to justify the first defendant's decision, but at the same time, has conceded that the court has the power to order disclosure by virtue of s 12(10) and (11) of the Adoption Act. The question is whether the court should make the order. It is submitted firstly, that the object of the new provisions is to protect the interests of all parties to the adoption, including the child; that an adoption order severs forever all rights and obligations between the natural parents and the child and therefore the court should not in principle grant the order. Secondly, it is submitted that the grant of an order would set a dangerous precedent, as it may be abused leading to undesirable social consequences. Thirdly, it is submitted that the application may not be bona fide on the grounds (a) it is made at such a late stage (the plaintiff is aged 34) and (b) that the natural parents are not likely to survive the plaintiff.

In my view, state counsel has overstated a case which has no substance in it. First, if the object of the new provisions is to protect the interests of all parties (presumably, their feelings or their conscience, but I would have thought it is primarily to protect the adopted child) connected with an adoption, that object has failed once an adopted child knows he or she is an adopted child. Secondly, I am unable to comprehend why the legal effect of an adoption order should by itself determine whether or not an adopted child who knows he or she is an adopted child should be denied the opportunity or right to know who his or her natural parents are. In the absence of a demonstrable public interest against disclosure, I would have thought that it is only morally right that an adopted child in such a position should be granted the right to know who his or her natural parents are. Indeed there may even be a countervailing public interest in favour of full disclosure in at least one specific circumstance: that of preventing the adopted child from contracting a marriage within any of the prohibited degrees of relationship prescribed by s 10 of the Women's

Charter. As for the third submission, there is absolutely no evidence to suggest the plaintiff's motive is anything but bona fide. In any case, if the plaintiff has a right to be informed, it does not matter what her motive is in seeking the information so long as it is not for an illegitimate purpose. In my view, whether or not the applicant is entitled by law to a certified copy of an extract from the defunct Register in order to obtain the identities of her natural parents, is determined by the scope of the relevant provisions of the Adoption Act and in particular s 12 thereof and not to what state counsel considers to be the policy reasons behind the new provisions. Section 12(6) provides that no person shall be permitted to inspect any such original or former entry or to take a copy thereof unless that person has certified and the Registrar-General is satisfied that the particulars recorded in the original or former entry are material for the purpose for which the inspection is required. Neither the materiality nor the purpose is defined in s 12(6). The Registrar-General rejected the application of the plaintiff solely on the ground that she was an adopted child. In my view, that was clearly not a proper ground for refusing the request. Under s 12(6), the Registrar-General needs only to be satisfied that the particulars recorded in the original entry are material for the purpose for which the inspection is required. Since s 12(6) does not prescribe the purpose for which the inspection is required, any legitimate purpose must suffice. Here the plaintiff requires inspection for the purpose of finding out who her natural parents are. That is a legitimate purpose. Therefore, I cannot see how the Registrar-General was in a position to say that the original entry was not material for the purpose for which the inspection was required.

In my view, the Registrar-General has misconstrued his duty under s 12(6) and has reached the wrong decision. Accordingly, I will make an order in terms of the application. However, to enable the defendants to apply for a stay of this order should they decide to appeal against my decision, I direct that this order should lie in the Registry for a period of seven days from today.

Application granted.

Solicitors: *Hoh & Mas.*

Reported by *Terence Tan Bian Chye*

Re Mechanised Construction Pte Ltd

HIGH COURT (SINGAPORE) – COMPANIES WINDING-UP NO 786 OF 1986
CHAO HICK TIN JC
27 APRIL 1989

Company Law – Winding-up petition – Grounds for winding-up – Failure to pay statutory demand – Dispute over amount owed – Whether petitioning creditor liable for damages – Part of statutory demand sum claimed not in dispute – Whether debtor's failure to pay this part was sufficient grounds for winding-up – Companies Act (Cap 50, 1985 Ed), s 254(2)(a) – UK Companies Act 1985, s 233(a) – UK Companies Act 1856, s 68(1)

The present winding-up proceedings to wind up the debtor company ('the company') were started by company H, but later, by order of court, H was given leave to withdraw its winding-up petition and in its place, B was granted leave to be substituted as petitioning creditor. The ground upon which B sought to rely to wind up the company was that the latter had neglected to pay or satisfy a statutory letter of demand. The amount claimed in the letter of demand was allegedly due from the company to B under a sale contract whereby B agreed to supply and install steelworks required for a building contract in which the company was a sub-contractor. After the works had been completed, B wrote to the company to demand payment. The company alleged that B had completed the work late, and the former had thus incurred additional expenses. The company also contended that payment could not be made until the actual structural steelworks had been measured and calculated by a quantity surveyor. B replied that the site for the steelworks were to be made available to them by a certain date but was only made available much later. In view of this non-compliance by the company in making available the site, the original timeframe for completion was no longer applicable and B was only required to complete the steelworks within a reasonable time. The amount claimed by the company as additional expenses was also declared to be excessive. B also disputed the claim that the steelworks had to be measured by the quantity surveyor. In the alternative, B contended that even if the amount claimed by the company as additional expenses was correct, there was still an amount which was indisputably due from the company to B.

Held, dismissing the petition:

(1) The first point of dispute regarding the date for completion of the steelworks by B raised questions of fact and law which ought to be thrashed out at trial.

(2) As regards the issue whether the steelworks had to be measured by a quantity surveyor, while the contract did not provide that this had to be so, this obviously would have to be so unless the parties could, among themselves, agree on the quantity. This was a question of fact.

(3) Considering all the circumstances, the proper course would be for B to commence an action to establish the debt due rather than a winding-up petition.

(4) It is a well-established principle that a winding-up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed. It is an abuse of the process of the court to petition to wind up a company upon the basis of a debt which is bona fide disputed.

(5) As regards B's alternative argument, B was not entitled to use the statutory demand process section. The section contemplated a creditor being able to point to a debt of a specified